

**In the HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Civil Writ Petition No.12106 of 2007

Date of Decision: -04.02.2015

Bharat Sanchar Nigam Limited, Gurgaon

...Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE B.S.WALIA**

**Present: Mr. Gurpreet Singh, Addl. Central Government
Standing Counsel for the petitioner.**

Ms. Mamta Singhal Talwar, AAG, Haryana.

RAJIVE BHALLA, J(ORAL)

The petitioner prays for issuance of a writ of certiorari for quashing assessment order, demand notice dated 15.3.2007 (Annexure P-4) issued by the Assessing Authority, Gurgaon and order dated 27.6.2007 (Annexure P-9) passed by the Joint Excise and Taxation Commissioner (Appeals) with a further prayer that a direction may be issued to the respondents not to realise Rs.2,50,06,196/- from the account of the petitioner.

Counsel for the petitioner submits that controversy in the present petition has been settled by the Supreme Court in **Bharat Sanchar Nigam Ltd. and another v. Union of India and others, 2006(3) SCC 1**, by holding that telecom facilities are a service that do

not inher any element of sale and are, therefore, not exigible to sales tax, under the Haryana General Sales Tax Act, 1973. Counsel for the petitioner also submits that in Civil Writ Petition No.18913 of 2003 (**M/s Bharat Sanchar Nigam Limited v. State of Haryana and others**), a Division Bench of this Court had set aside a similar assessment order and remitted the matter to the Assessing Officer to take a fresh decision in the matter. The Assessing Officer has, after considering the matter afresh, held that sales tax is not leviable. The writ petition may be allowed, the impugned order and the demand notice may be set aside and the State of Haryana may be directed to refund the amount paid by the petitioner as sales tax.

Counsel for the State of Haryana is not in a position to raise any argument, against the judgment in Civil Writ Petition No.18913 of 2003 (**M/s Bharat Sanchar Nigam Limited v. State of Haryana and others**) or controvert the facts.

We have heard counsel for the parties, perused the impugned order and the demand notice. The Supreme Court having held in **BSNL's case** (supra) that telecom services provided by the petitioner are in a nature of a service that do not inher any element of sale, the impugned orders and the demand notice are without authority of law.

Consequently, we allow the writ petition, set aside the demand notice (Annexure P-4) and order dated 27.6.2007 (Annexure P-9) and in terms of order dated 04.09.2006, passed in Civil Writ Petition No.18913 of 2003, remit the matter to the Assessing Officer, for adjudication afresh, within three months of receipt of a certified copy

of this order.

The petitioner is directed to appear before the Assessing Officer, for further proceedings on 16.3.2015.

(RAJIVE BHALLA)
JUDGE

February 04, 2015
VK

(B.S.WALIA)
JUDGE